IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3855 of 1995

Date of Decision: 21-4-2004

ISHWARBHAI BHARUMAL SADHWANI

Versus

PRAKASH KANAIYALAL PARK & 1

(for full cause title, see next sheet)

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?

For the Appellant Mr.Sandeep Shah, Adv.

For the Respondent-2 Mr.K.K.Nair, Adv.

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

#. Through this Appeal, award of the Motor Accident Claims Tribunal - III (Main), Ahmedabad, in M.A.C.P. No.470 of 1991 dated October 11, 1994, has been challenged.

#. Ishwarbhai Bhurmal Sadhwani (claimant), aged 32

years, sustained injuries in motor accident which took

Whether reporters of Local Papers may be allowed to see the Judgment?

place on 16.3.1990 when matador bearing registration number GBX-5307 hit the scooter near Maya cinema coming from Rajyapir Dargah at an excessive speed. The claimant preferred Claim Petition for Rs.4 lacs with cost and interest. The respondents deny the time, place and occurrence. They submit that matador was being driven at moderate speed by its driver. It was claimant who was proceeding on his scooter in a careless manner, therefore, the accident took place. The respondents also deny the income of claimant of Rs.2,500/= per month being exaggerated. On the pleadings of the parties, the questions for determination before the Claims Tribunal were whether the accident was caused by the respondent-1 - driver of matador bearing No.GBX-5307 on 16.3.1990 and whether it was caused due to rash and negligent driving by the driver of the matador and whether the driver of the matador possessed valid driving licence and whether the claimant contributed to the accident on account of his negligence in driving the scooter and whether the claimant was entitled to compensation, if so, from whom. The Claims Tribunal, on the basis of evidence, came to the conclusion that accident was caused by driver of the matador due to rash and negligent driving and possessed valid driving licence. With regard to contributory negligence, finding is that the claimant contributed to the accident to the extent of 20% while the driver of the matador 80%. Accordingly, compensation of Rs.74,000/= has been awarded against the respondents against Rs.4 lacs claimed by the claimant carrying interest at the rate of 15% from the date of claims petition till realization. The claimant is not satisfied with this award, therefore, it is challenged through this Appeal seeking enhancement of award. There is no Appeal by respondents.

#. Record perused, counsel for parties heard. Shri Sandeep Shah, learned counsel for the claimant, submits that the Claims Tribunal has committed serious error in coming to the conclusion that claimant was 20% responsible for the accident and respondent 80%. As a matter of fact, accident has been caused by driver of matador and evidence does not point out any contributory negligence on the part of claimant. This contention is opposed by Shri K.K.Nair, learned counsel appearing for the Oriental Insurance Company Limited.

#. Perusal of evidence clearly points out that negligence is of driver of matador. The Claims Tribunal has also discussed the evidence on this aspect in the impugned award. After appreciating the documents, particularly the Panchnama, it comes to the conclusion that negligence is of matador driver, still it holds the claimant responsible for the accident to the extent of 20%. This conclusion is not based on evidence, therefore, it is liable to be set aside. Consequently, we hold that the accident has been caused by matador driver and claimant has not contributed to the same.

#. Next question pertains to income of the claimant. Shri Nair forcefully contended that income certificate has been issued by brother-in-law of claimant. It is from 1.1.1990 and accident took place on 16.3.1990. During 1977-78, the claimant had been paid Rs.5,000/= per annum by the brother-in-law. It is not stated where the claimant served prior to 1.1.1990. The brother-in-law filed Income Tax Return in August 1990, therefore, the entry with respect to this payment to the claimant has been made basis to make a case for awarding higher compensation, as such, the Tribunal has rightly taken the income of the deceased at Rs.1,500/= per month. Shri Sandeep Shah opposes this contention and submits that claimant was working with his brother-in-law and no objection can be taken to this employment. Certificate of salary of Rs.2,500/= per month has been filed and proved. No evidence has been led by the respondents to rebut the evidence of the claimant. Therefore, evidence has to be accepted and income assessed thereon. Where the claimant was after 1978 is not relevant for examining the question of income of deceased. He may be anywhere but at the relevant time, he was working with brother-in-law and receiving salary of Rs.2,500/= per month.

Another facet of the question relates to disability. It is submitted by Shri Nair that the claimant was treated at one of the biggest hospitals in India but no disability certificate has been obtained therefrom. Disability certificate Dr.Balkrishna Desai is on higher side. It is issued in a casual manner and does not mention the data on which it is based. Further, the claimant does not reflect any disability in his speech and behaviour. Therefore, much assistance cannot be drawn from the disability certificate. Further, multiplier cannot be more than 15. Second schedule of Motor Vehicles Act, 1988, cannot be applied. Last contention is that rate of interest is excessive. It

should not be above 9% per annum.

#. These submissions have been examined. True it is that the claimant has furnished certificate of salary from his brother-in-law with whom he was working at the relevant time. He mentions his residence at Ahmedabad and place of work at Vadodara. Further, the fact that other members of staff are being paid less salary is also one of the factors to be considered but not to the extent that he should be taken to be paid less salary as compared to the other staff. Since he was a relation, therefore, expected to be paid higher salary as compared to the other staff and his responsibilities may be higher as compared to them. Therefore, instead of accepting the statement of the claimant in totality, it would be appropriate to fix the income of the claimant between Rs.2,500/= stated by the claimant and Rs.1,500/= assessed by the Tribunal. Therefore, the income of the claimant is fixed to Rs.2,000/= per month.

#. With regard to disability, the respondents have not given evidence to show that the disability is less than 60% assigned by Dr.Balkrishna Desai. They could have furnished evidence on this question from the hospital where the claimant was treated if they wanted to rebut disability certificate of Dr.Balkrishna Desai. Contention that this certificate is issued in a casual manner without conducting proper test cannot be accepted after going through the statement of Dr.Balkrishna Desai, who has categorically stated about the physical state of the claimant in his deposition and seriousness of head injury. He has been subjected to detailed cross examination at the instance of the respondents but nothing substantial favouring respondents has come out. Therefore, the Tribunal has no justification nor it assigned reasons to reduce the disability assigned by Dr.Balkrishna Desai. Therefore, the conclusion of Claims Tribunal on this aspect is liable to be set aside.

#. With regard to multiplier, it may be true that accident took place on 16.3.1990 and second schedule under Section 163-A of the Motor Vehicles Act, 1988, came into force on 14.11.1994, still, while deciding this issue, we can seek assistance from this schedule for application of proper multiplier. Even assuming that it does not apply, the facts of the case justify application of multiplier of 15.

#. The monthly income of the claimant has been fixed at Rs.2,000/=. Therefore, considering the disability of the claimant to be of 72%, the income of the claimant per

month would come to Rs.1,440/=. Therefore, the compensation awardable in this case to the claimant comes to Rs.3,08,200/= (Rupees three lacs eight thousand two hundred only) [computed as under] with interest at the rate of 12% per annum from the date of original claims petition till realization.

Annual Income of the claimant:

Rs.1440/= x 12 = Rs. 17,280/=

Applying multiplier of 15:

Rs.17,280/= x 15 = Rs.2,59,200/=
Add:
For shock and suffering Rs. 20,000/=
Actual loss (for 1 year) Rs. 24,000/=
Medical expenses Rs. 5,000/=

Total: Rs.3,08,200/=
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Shri Nair submits that Insurance Company may be given eight weeks' time to pay the compensation. Prayer allowed. Let compensation be paid to the claimant on proper verification within eight weeks.

#. Accordingly, the Appeal is allowed and the Award impugned is modified to the aforesaid extent. Cost on parties.

(BHAWANI SINGH)
CHIEF JUSTICE

(H.K.RATHOD)
JUDGE

(sunil)